

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)
) File No. 22-CR-136
) (JNE/DTS-1)
Plaintiff,)
)
vs.) Minneapolis, Minnesota
) February 7, 2023
Derrick Maurice Scott,) Courtroom 12W
) 9:00 a.m.
Defendant.)
)

BEFORE THE HONORABLE JOAN N. ERICKSEN, and a Jury
UNITED STATES DISTRICT COURT JUDGE
(JURY TRIAL - VOLUME 2)

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P R O C E E D I N G S

(8:10 a.m.)

THE COURT: Good morning, everybody. Please be seated. And, Government, I believe we are ready for your next witness.

MS. WALCKER: Good morning, Your Honor. The government calls Forensic Scientist Kaaren Simon to the stand.

KAAREN SIMON,

After having been first duly sworn, testified upon the oath, as follows:

THE COURT: Please take the witness stand.

MS. WALCKER: May I inquire?

THE COURT: Please.

DIRECT EXAMINATION

BY MS. WALCKER:

Q. Good morning, Ms. Simon. How are you this morning?

A. I'm fine, thank you.

Q. Ms. Simon, where are currently employed?

A. I work at the Minnesota Bureau of Criminal Apprehension. Also, known as the BCA.

Q. What is the Bureau of Criminal Apprehension or the BCA?

A. It is part of the Department of Public Safety and assists law enforcement agencies across the state to solve and prevent crimes.

1 Q. Are you employed in a particular department at the BCA?

2 A. Yes. I work in the biology section of the forensic
3 laboratory.

4 Q. What does the BCA's forensic laboratory do?

5 A. The laboratory receives evidence from different crimes,
6 and we analyze that evidence.

7 Q. What is your role in the BCA forensic lab?

8 A. I analyze the evidence and look for bodily fluids, such
9 as semen, saliva and blood, and then I will analyze that
10 evidence to generate DNA profiles.

11 Q. And how long have you -- and that's the role of the
12 forensic scientist; is that's correct?

13 A. Yes.

14 Q. How long have you been in the role of forensic
15 scientist?

16 A. Five years.

17 Q. Can you tell the jury a little bit about your
18 educational background?

19 A. I have a Bachelor's of Science degree in Biology from
20 the University of Minnesota-Duluth and a Forensic Science
21 Certificate from Hamline University.

22 Q. Have you received any specialized training in the area
23 of DNA testing to become a forensic scientist?

24 A. Yes.

25 Q. And can you describe that training for the jury, please?

1 A. Upon being hired at the BCA, I went through an extensive
2 training process, which involved observing other scientists
3 in the lab, reading relevant journal articles and taking
4 oral and written exams.

5 Q. And, Ms. Simon, before you have a microphone, that
6 microphone is actually adjustable, do you mind for the
7 benefit of the court reporter move it closer, thank you so
8 much. And, Ms. Simon, have you testified as an expert
9 previously in a case regarding DNA testing?

10 A. Yes.

11 MS. WALCKER: Your Honor, at this point we tender
12 Ms. Simon as an expert in DNA testing.

13 THE COURT: She can go ahead and testify.

14 MS. WALCKER: Thank you, Your Honor.

15 BY MS. WALCKER:

16 Q. Ms. Simon, before we talk about the DNA testing you
17 performed in this case, I'm going to talk a little bit about
18 the science of DNA. To start with, can you tell us what is
19 DNA?

20 A. DNA is the chemical blueprint that makes a person who he
21 or she is. Half the DNA comes from the mother and half from
22 the father.

23 Q. And a really high level, where is DNA found in the body?

24 A. In most cells of the body.

25 Q. Is DNA unique to a person?

1 A. Yes. With the exception of identical twins.

2 Q. So we're not identical twins, is my DNA different than
3 your DNA then?

4 A. Yes.

5 Q. In the area of forensic, is it possible to distinguish
6 DNA of one person to another?

7 A. Yes.

8 Q. How about comparing a sample of DNA from a person you
9 know to a person where the person is unknown, is it possible
10 to know if the same person provided that DNA sample?

11 A. Yes.

12 Q. Can DNA get deposited onto objects?

13 A. Yes.

14 Q. Is it possible to retrieve DNA that has been deposited
15 onto objects?

16 A. Yes.

17 Q. And, generally, how does DNA from a person get deposited
18 onto a physical object?

19 A. DNA can get onto -- can be deposited onto objects either
20 through touch or from a bodily fluid.

21 Q. So just to illustrate, if I touch this pen or an object,
22 is my DNA likely to be deposited onto that object?

23 A. Yes.

24 Q. What are some of the factors that would make it more or
25 less likely that a person's DNA would be on an object that

1 the person handles?

2 A. One factor could be the texture of the item. Smooth
3 objects are less regularly -- excuse me -- textured items
4 hold DNA more readily than smooth objects.

5 Q. Okay. Let's talk about DNA testing now. First, how
6 many parts of a strand of DNA does DNA analysis focus on in
7 terms of a number?

8 A. At the BCA, we look at 21 different locations in the DNA
9 strand.

10 Q. And can the amount of DNA be amplified by scientific
11 instruments?

12 A. Yes.

13 Q. Can you tell the jury very generally speaking what is
14 involved in DNA testing and developing and comparing a DNA
15 profile?

16 A. There are forming steps to the DNA analysis process.
17 The first is called extraction in which the DNA is separated
18 from the evidence or the items. Second is called
19 quantitation in which the amount of DNA is determined.
20 Third is amplification in which millions of copies of DNA
21 are produced. And, fourth, the DNA is separated out to
22 generate the DNA profile that I will then view on a computer
23 program.

24 Q. And what is involved in comparing one DNA profile to
25 another?

1 A. I will look to see what DNA types are present in the
2 different items and see if there are similar types in the
3 different items.

4 Q. Can you explain the idea of major contributors and minor
5 contributors of DNA?

6 A. A major contributor is found in a mixture, which is when
7 there is more than one person contributing to that item.
8 The major contributor is contributing more DNA than other
9 people, and the minor contributors are those that are
10 contributing less.

11 Q. And can you just explain for the jury what is it when
12 you say a mixture, can you explain that a little more for
13 the jurors?

14 A. Yes. A mixture is when there is more than one person
15 contributing DNA to that item.

16 Q. How common is it based on your training and experience
17 to obtain a mixture of DNA on an item such as a firearm?

18 A. I see it fairly often.

19 Q. What does it mean when your forensic testing determines
20 that you have a match between DNA profiles?

21 A. It means that there is the same DNA types found in both
22 items.

23 Q. Okay. Let's talk now about the BCA lab briefly. Is the
24 BCA lab nationally accredited?

25 A. Yes.

1 Q. What does that mean?

2 A. Accreditation is when an organization comes to our lab
3 to make sure that we are following standards that are set
4 for us.

5 Q. Does the lab comply with all industry standards?

6 A. Yes.

7 Q. Let's turn now to the case at hand, Ms. Simon. Did you
8 perform DNA testing in the case involving Derrick Scott?

9 A. Yes.

10 Q. On what items of evidence pertaining to this case did
11 you perform DNA testing?

12 A. I did DNA testing on swabs from a pistol as well as a
13 magazine and life cartridges; also, on a known sample from
14 Derrick Scott; and a known sample from Mikita Jackson.

15 Q. Were these items all properly sealed and in tact when
16 you began your analysis?

17 A. Yes.

18 Q. Ms. Simon, I'm now going to show you what's been
19 admitted into evidence as Government's Exhibits 15, 16 and
20 17. Starting with Government Exhibit 15. Do you recognize
21 this document?

22 A. Yes.

23 Q. And what is this document?

24 A. This is the envelope that the known sample from Derrick
25 Scott was sent to the lab in.

1 Q. I'm going to show you Government Exhibit 16. What is
2 this document?

3 A. This is an envelope that the known sample from Mikita
4 Jackson was sent to the lab.

5 Q. And, finally, showing you Government Exhibit 17, what is
6 this showing us?

7 A. This is the envelope that the evidentiary items were
8 sent to us in.

9 Q. Now, Ms. Simon, I'm going to show you what's been marked
10 for identification but not yet admitted into evidence as
11 Government Exhibit 18. Now, this is a two page document.
12 I'm going to show you the first page and the second page
13 here.

14 THE COURT: Don't show it until it's been
15 admitted.

16 MS. WALCKER: I'm going to show this only to you.

17 Your Honor, may I show Government Exhibit 18 to
18 the witness and not for publication yet?

19 THE COURT: Yes.

20 MS. WALCKER: Okay, thank you.

21 Q. Ms. Simon, do you recognize this document?

22 A. Yes, I do.

23 Q. And is this a document of your analysis of the DNA in
24 this case?

25 A. Yes.

1 MS. WALCKER: Your Honor, I would offer Government
2 Exhibit 18 into evidence at this time.

3 MR. DEVORE: No objection, Your Honor.

4 THE COURT: 18 is received. And you may now
5 publish.

6 MS. WALCKER: Thank you, Your Honor.

7 BY MS. WALCKER:

8 Q. Ms. Simon, can you please walk us through what this
9 chart shows us?

10 THE COURT: Members of the jury, publish in our
11 words means "show". It doesn't mean go get a publishing
12 company and write a book.

13 MS. WALCKER: Thank you, Your Honor.

14 BY MS. WALCKER:

15 Q. Ms. Simon, can you tell us what this chart we're seeing
16 shows?

17 A. This shows the different DNA types that were found on
18 each of the items that were analyzed.

19 Q. And under the DNA summary heading there, do you see that
20 before you?

21 A. Yes.

22 Q. Can you walk us through the sample name column here?
23 I'll make this a little bit bigger so we're not straining
24 our eyes.

25 A. The top row of the DNA types found on the magazine and

1 live cartridges. The second row are the DNA types found on
2 the pistol and switch. The third row, the green row, is the
3 DNA types that were found from Mikita Jackson's known
4 sample, and the bottom blue row are the DNA types found from
5 Derrick Scott's known sample.

6 Q. And we talked earlier about it to the number of items in
7 a DNA strand. Is this when you use your work product in
8 comparing the DNA on those items in this case?

9 A. Yes.

10 Q. Did you make any conclusions and findings after doing
11 the DNA testing in this case?

12 A. Yes.

13 Q. What were those findings with respect to the gun and
14 magazine we just discussed?

15 A. May I refer to my report?

16 Q. Oh, yes.

17 MS. WALCKER: Your Honor, may the witness review
18 her report to refresh her recollection?

19 THE COURT: Yes.

20 MS. WALCKER: Thank you.

21 THE WITNESS: For which item?

22 BY MS. WALCKER:

23 Q. Start with the gun.

24 A. The pistol and switch was a mixture of three or more
25 individuals. The major male DNA profile matches Derrick

1 Maurice Scott.

2 MR. DEVORE: Your Honor, objection. I believe the
3 witness is reading from the report. I prefer that she
4 refresh her recollection and testify as to what she knows.

5 THE WITNESS: I apologize.

6 THE COURT: Let me rule on the objection first.
7 Would you clarify your question?

8 MS. WALCKER: Yes, thank you, Your Honor.

9 BY MS. WALCKER:

10 Q. Ms. Simon, once you have an opportunity to refresh your
11 recollection, I'm going to ask you a couple of questions.
12 Okay?

13 A. Okay.

14 Q. And if you could review that and let me know when you're
15 ready?

16 A. Yes.

17 Q. Ms. Simon, what were your findings and conclusions with
18 respect to the gun in this case?

19 A. It was a mixture of three or more individuals. The
20 major male DNA profile matched Derrick Scott and did not
21 match Mikita Jackson.

22 Q. What does it mean that the major male DNA profile
23 matches Derrick Scott?

24 A. When I looked at the DNA types found on the items, the
25 DNA types from Derrick Scott were found in the major profile

1 of the gun.

2 Q. And what does it mean that the DNA profile, the major
3 contributor did not match the DNA profile of Mikita Jackson?

4 A. That means that her DNA types were not found in the
5 major profile.

6 Q. And with respect to the magazine, what were your
7 findings and conclusions?

8 A. It was a mixture of four or more individuals. The major
9 DNA profile matched Derrick Scott and did not match Mikita
10 Jackson.

11 Q. And how strong of a correlation was that DNA match for
12 Derrick Scott?

13 A. It would not be expected to occur more than once among
14 unrelated individuals in the world population.

15 Q. You said, "more than once among unrelated individuals in
16 the world population"?

17 A. Correct.

18 Q. Is that a strong correlation?

19 A. Yes.

20 Q. Is there any stronger correlation?

21 A. Not that we use, no.

22 MS. WALCKER: Your Honor, may I confer with my
23 co-counsel?

24 THE COURT: Yes.

25 MS. WALCKER: Thank you, Your Honor.

1 MS. WALCKER: Thank you, Ms. Simon. I have no
2 further questions. Thank you, Your Honor.

3 THE COURT: Mr. DeVore?

4
5 **CROSS EXAMINATION**

6 BY MR. DEVORE:

7 Q. Good morning.

8 A. Good morning.

9 Q. Ms. Simon, did you pull the swabs off the gun yourself
10 or was that done by somebody else?

11 A. That was done by someone else.

12 Q. Did you ever actually physically see the gun in your
13 possession?

14 A. No.

15 Q. Do you know what parts of the gun were actually swabbed?

16 A. Not specifically, no.

17 MR. DEVORE: That's all I have, Your Honor.
18 Thank you.

19 THE COURT: Anything else, Ms. Walcker?

20 MS. WALCKER: No, Your Honor. Thank you.

21 THE COURT: Ms. Simon, thank you. You may step
22 down.

23 MR. HOLLENHORST: The government calls Denis
24 Otterness.

25 **DENIS OTTERNESS,**

1 After having been first duly sworn, testified upon
2 the oath, as follows:

3 THE COURT: Take the witness stand.

4
5 **DIRECT EXAMINATION**

6 BY MR. HOLLENHORST:

7 Q. Please state your full name.

8 A. Dennis Otterness, O-T-T-E-R-N-E-S-S. First name is
9 Denis, with one S.

10 Q. Where do you work, Mr. Otterness?

11 A. I'm currently employed as the Chief of Police for the
12 West Fargo North Dakota Police Department.

13 Q. You don't do that every day of the week though, do you?

14 A. Serve as the chief?

15 Q. No, I guess what I'm alluding to your face is very red,
16 and I think you've been somewhere else recently.

17 A. Yes, thank you. I did get a chance to thaw out in
18 Arizona and play a little golf the last few days, so other
19 than that.

20 Q. All right. So as Chief of Police though, what are your
21 duties up there?

22 A. So I oversee a department of 75 sworn officers and about
23 15 civilians with some volunteers, and just every day
24 management and oversight of the entire department, all four
25 divisions that we have, and then we have a number of people

1 that are assigned to different task force operations in the
2 Fargo, Moorhead, West Fargo and metro area.

3 Q. Let me be clear about one thing, you have nothing to do
4 with this case other than testifying here about certain
5 behaviors of drug traffickers; is that right?

6 A. That's correct.

7 Q. But you have reviewed some of the evidence in this case;
8 is that right?

9 A. Yes, I have.

10 Q. How long have you been a police officer?

11 A. 32 years.

12 Q. What are some of the other assignments you've had in
13 connection with your duties?

14 A. So I spent a majority of my career in the Minneapolis
15 metropolitan area here with the Bloomington, Minnesota,
16 Police Department. I served a short time in the patrol
17 division there. I was assigned to the Special
18 Investigations Unit, and we focussed primarily on narcotics
19 and human trafficking cases, some felony fugitive
20 apprehensions. And from that unit, I was loaned out to the
21 Drug Enforcement Administration here in Minneapolis and
22 served as a task force officer for a number of years
23 investigating federal level narcotics cases.

24 Q. What education have you had?

25 A. I'm a graduate of North Dakota State University. I have

1 a bachelor's degree from there, and I received a Master's
2 degree in Law Enforcement Leadership and Public Safety from
3 the University of Saint Thomas here in St. Paul.

4 Q. Have you ever gotten any specialized training in drug
5 trafficking and weapons possessions?

6 A. I have. A number of years numerous courses through both
7 the U. S. Attorney's Office, the Department of Justice here
8 in Minnesota, more locally, with the Bureau of Apprehension,
9 lots of different trainings on techniques and trafficking
10 and firearms, asset forfeiture, money laundering cases, and
11 things like that.

12 Q. Have you ever given any training?

13 A. Yes, I have.

14 Q. Can you please describe?

15 A. Sure. I've done a number of trainings at my own
16 department related to narcotics trafficking. I've been a
17 training officer for a number of people that came through
18 our narcotics unit in Bloomington, in addition to training
19 some federal agents while I was assigned at the DEA as one
20 of the more senior task force officers there.

21 Q. Have you conducted your own investigations into drug
22 trafficking and weapons possession?

23 A. Yes, I have.

24 Q. How many investigations would you estimate you worked
25 on?

1 A. Over the specifically as a case agent or a co-case agent
2 or assisting from the group, the enforcement group I was in,
3 it would range in the hundreds. I served in that capacity
4 for approximately 12 years, so several hundred cases.

5 Q. Have you testified as an expert before in the area of
6 your expertise?

7 A. Yes, I have.

8 Q. And I want to clear another thing up right away. Are
9 you being paid any special fees for your testimony here
10 today?

11 A. No, I'm not.

12 Q. Have you been told to testify one way or another?

13 A. No.

14 Q. Is your testimony going to be based on your own
15 experience and training and nothing that anyone has
16 suggested to you?

17 A. Yes, it is.

18 Q. Okay. So let's start off with a general question. This
19 case involves money, or excuse me, this case involves drugs
20 and guns. Is there any special connection between guns and
21 drugs?

22 A. There is. Based on my experience, certainly in my
23 training and the number of cases I've worked, guns and drugs
24 typically go hand in hand, and the reason is trafficking in
25 narcotics is a very dangerous business. It's an all cash

1 business, and it's done usually covertly, and so there is
2 the propensity for violence associated with that either
3 through robberies of cash or product, and so most cases that
4 I've investigated in terms of drug trafficking had a
5 firearms component as well.

6 Q. Why would anyone who is peddling drugs have a gun then?

7 A. Well, as I stated, sometimes it's for protection either,
8 again, product that is very valuable, U.S. currency, which
9 is the primary trade in drug trafficking, and also for
10 personal protection. You know, again, there's a fair amount
11 of violence that's associated with drug trafficking.

12 Robberies happen quite frequently and usually because people
13 may be involved in something that's illegal, they're not
14 able to contact the police department for assistance, so a
15 lot of times people will take matters into their own hands.

16 Q. Would you say that firearms are more common or less
17 common when a drug trafficker is operating in a high crime
18 area?

19 A. More common.

20 Q. Why is that?

21 A. Again, it's the protection factor. If it's a high crime
22 area, there's a propensity for violence any way in that
23 area, but then if you factor in the trafficking and, again,
24 the large volumes of currency that go along with that and
25 the value of the product that somebody might be selling,

they have to protect their interest.

Q. Is there anything significant about a gun being found in close proximity to drugs?

A. In terms of significance, I guess it's not uncommon. Oftentimes, again, most of the cases that I worked on that involve traffickers or trafficking of narcotics, there was generally firearms present.

Q. Would the presence of a gun lead to a conclusion one way or another as to whether or not the drugs found near the gun are for distribution or for personal possession?

A. I guess it would depend on the quantity but certainly traffickers rather than users typically possess firearms because, again, there's going to be larger quantities of product rather than user quantities, so it may either be that they have a large sum of U.S. currency in their possession from the sale or proceeds of those drugs or they are going to have the product on hand and both are very valuable in terms of drug trafficking.

Q. You've talked about money associated with drug trafficking, is that why people sell drugs?

A. It is, for profit.

Q. Do you always find money in close proximity to drugs during seizures?

A. No.

Q. Why is that?

1 A. Well, it depends. Generally speaking, in my experience,
2 traffickers don't often times carry their entire stash of
3 money along with their product because if they be contacted
4 by law enforcement, that money then becomes subject to asset
5 forfeiture or seizure. So it could be that they just got
6 started trafficking or selling for the day, and they don't
7 have any cash.

8 I've also seen traffickers that will go out and
9 make sales and drop money off at a stash location where they
10 keep money. They don't oftentimes keep their money and
11 their drugs in the same location. Again, because if they
12 get detected by law enforcement then it's subject to
13 forfeiture.

14 Q. Is there any significance to the time of day when drug
15 traffickers deal drugs?

16 A. I would say generally based on the cases that I worked,
17 it was usually late mornings into the, you know, late
18 evenings, not very typical to be early morning. You know,
19 the 8:00 a.m. start time or 9:00 a.m., it generally speaking
20 was after lunch and into the afternoon and evening hours.

21 Q. If a person is starting off on drug-runs say in the
22 mid-afternoon and is found with drugs but not cash, would
23 that be unusual?

24 A. No.

25 Q. Why not?

1 A. Well, again, if you're just getting going for the day,
2 making some deliveries, it would not be unusual at all to
3 not have any currency. Again, depending on, you know, who
4 it is or where they're staying, they're not generally going
5 to travel with all of their proceeds and all of their
6 product at the same time because if you lose both, you know,
7 you've lost not only your proceeds from the sale of the
8 drugs but you've also lost your product.

9 Q. We've talked about firearms that drug traffickers carry.
10 What kind of firearms do they typically carry?

11 A. Typically, something that could be concealed a handgun.

12 Q. Okay. Are you familiar with the Glock?

13 A. I am.

14 Q. Is that a common firearm that's found on the street?

15 A. Yes, it is.

16 Q. How much does a Glock on the street sell for typically?

17 A. Well, I would say there's probably a range. It depends
18 how quickly somebody is trying to get rid of one. If it was
19 used in a crime, you might be able to sell that gun quickly
20 for not as much. If it's a high capacity sought after
21 firearm like a Glock, generally it sometimes can go for
22 twice the retail price, if it's what we would refer to as a
23 clean gun or one that hasn't been used in a crime before;
24 but so really there's a range but, generally, they don't
25 sell for retail price. I would say it's generally more than

1 that.

2 Q. Can you give us a general range of prices then for --
3 you're familiar with the firearm that was seized in this
4 case?

5 A. Yes, I am.

6 Q. For that firearm, what would you say?

7 A. Well, I would say the retail price is probably somewhere
8 in the \$400 range, so, again, if it was a gun that wasn't a
9 clean gun or used in a commission of a crime, it may sell
10 for a little bit less. You know, that 250 to \$300 range.
11 If it's a gun that nobody has used in the commission of a
12 crime, it could sell for \$800 or they may trade drug
13 products for a firearm. I've seen that happen.

14 Q. Have you ever come across the term "switch"?

15 A. I have.

16 Q. What is a switch?

17 A. A switch is an after-market modification to a firearm
18 that basically converts it from a semi-automatic or a
19 firearm that shoots one round every time you pull the
20 trigger. It converts it to a fully automatic firearm, so
21 you only have to pull the trigger once and it will fire
22 multiple rounds, basically, until you either let off the
23 trigger or you run out of ammunition.

24 Q. Are firearms equipped with a switch more or less
25 expensive on the street?

1 A. They would be more expensive.

2 Q. Why is that?

3 A. Because they are fully automatic. Some of it is, in the
4 drug trade, it's a status issue to be able to have a fully
5 automatic handgun on the street, and it's also something
6 that obviously is very powerful. You can put a lot of
7 rounds down range with a single pull of a trigger.

8 Q. Based on your experience and training, have you found
9 that drug traffickers and people who possess weapons are
10 generally familiar with the characteristics of those
11 weapons?

12 A. Yes.

13 Q. How so?

14 A. Well, they would have to know how they function, and so
15 if somebody was carrying a handgun with a switch, it would
16 be they're mounted on the back of the slide of a handgun, so
17 it would be very obvious that it's an after market piece
18 that was put on that firearm for a very specific purpose, to
19 convert that gun again from a semi-automatic handgun to
20 something that is fully automatic.

21 Q. How common are these switches?

22 A. They're becoming a lot more common. I would say
23 10 years ago very uncommon, but today in today's world with
24 drug trafficking, they are much more common now.

25 Q. Are you familiar with the terms that drug traffickers

1 use in describing a weapon equipped with a switch? Do they
2 call it anything?

3 A. I guess I wouldn't be able to testify to a specific
4 terminology.

5 Q. Okay. Is the term "switch" sometimes used to describe
6 both the little gizmo on the back and also the firearm
7 itself?

8 A. Yes, yes.

9 Q. So if one were to say, "I'm going to get me a switch,"
10 it could refer to a firearm with a switch?

11 A. Yes.

12 Q. Do you know what a magazine is other than one you read?

13 A. I do. For --

14 Q. For firearms?

15 A. For firearms terms, it's the magazine holds the
16 ammunition that gets inserted into the handle of the gun.

17 Q. Have you examined the magazine that was seized in
18 connection with this case?

19 A. Yes, I have.

20 Q. Is there anything unusual about it?

21 A. Well, it's a large capacity magazine. It's not one
22 that's typically sold with that firearm. It's an extended
23 magazine that carries 24 rounds, which is a high capacity
24 magazine as opposed to what would normally come with that
25 weapon.

1 Q. Is there any correlation between a person possessing a
2 firearm equipped with a switch and a high capacity magazine?

3 A. Yes.

4 Q. What is that correlation?

5 A. Well, again, as I previously mentioned, being able to
6 have the additional rounds and fire power to be able to
7 again with a single pull of a trigger send a lot of rounds
8 down range and in a very short period of time, so they are
9 very dangerous.

10 Q. Let's talk about fentanyl, do you know what fentanyl is?

11 A. I do.

12 Q. What is it?

13 A. It is a synthetic opioid. It's an analgesic, so it's
14 medical purpose is to relieve pain.

15 Q. And it was created for that purpose, is that your
16 understanding?

17 A. It was.

18 Q. Did it eventually evolve into becoming a drug of abuse?

19 A. It has. It's become very prolific over the last
20 probably five to seven years. Fentanyl has become very
21 dangerous for all of our communities. It is very potent.
22 It's very lethal. And, unfortunately, today you see
23 fentanyl being cut into almost every type of controlled
24 substance that's sold illegally in the United States.

25 Q. And when you use the term "cut", you mean mixed in with?

1 A. That's correct.

2 Q. Where does fentanyl come from? The abusing fentanyl,
3 the drug of abuse, where does that fentanyl come from?

4 A. Well, it's manufactured. It's man-made. It's
5 synthetic, and so a lot of the precursor chemicals that get
6 utilized to manufacture fentanyl come from overseas in
7 China, but a majority of the fentanyl that is coming into
8 the United States either in the form of counterfeit pills or
9 laced into heroin, cocaine, methamphetamine, a majority of
10 that is coming into our southwest border from Mexico.

11 Q. How is this fentanyl typically packaged?

12 A. Well, it gets sold illegally on the street either in
13 powder form or it gets again cut into or laced into cocaine
14 that's being trafficked into the United States from Mexico,
15 methamphetamine, and the more dangerous piece of that now
16 for us in law enforcement is the counterfeit pills that are
17 being pressed or manufactured in Mexico and brought into the
18 U.S. Those are getting pressed into -- that fentanyl is
19 being added into a pill that mimics or is a counterfeit
20 look-alike to something that you could actually purchase in
21 a pharmacy with a doctor's prescription.

22 Q. Are you familiar with the term "M30 pill" or "M Box 30
23 tablet"?

24 A. Yes, that's exactly what I was describing just in my
25 testimony. Those are the counterfeit pills that are very

prolific in the communities right now.

Q. So if I understand your testimony that there are these M-30 pills that are legitimately sold, do they contain other drugs, legitimate drugs; is that right?

A. That's correct. It would be manufactured by a pharmaceutical manufacturer that you could, if you were experiencing pain and a doctor prescribed, you know, you have a prescription for a pain killer, you can go into a pharmacy and get a prescription drug that looks almost identical to the ones that are being sold now illegally on the street.

Q. But those prescription drugs don't contain fentanyl, right?

A. That's correct.

Q. So why would a drug trafficker want to disguise or mimic a pill that doesn't contain fentanyl? Why would someone want to do that?

A. Well, it's much more profitable to have a counterfeit M-30 pill with fentanyl. It sometimes, I guess, defies logic. But from the user's perspective, they, typically, if you were going to sit down and talk to a user, they would tell you that they are trying to chase that same high that they got the first time they used a controlled substance. So the demand for fentanyl-laced either heroin or the M30 pills is sky rocketing, and so rather than use heroin that's

1 not cut or an M30 pill that is coming as a prescription from
2 a pharmaceutical company, most of the users are demanding
3 that they be able to purchase fentanyl laced narcotics now.
4 So it's supply and demand, and the demand is coming on the
5 user end.

6 Q. Have these counterfeit M30 pills become more common over
7 the last couple of years?

8 A. Very much so.

9 Q. Did you even see them five or six years ago?

10 A. No.

11 Q. So how potent is fentanyl? Can you give an example?

12 A. It's very potent. It's causing a number of overdoses
13 throughout our communities, and I believe, according to the
14 Drug Enforcement Administration and other chemists and labs,
15 two milligrams of fentanyl, which is basically like a couple
16 of salt crystals that you might pour out of your salt shaker
17 is enough to cause an overdose.

18 Q. And that's pure fentanyl?

19 A. That's pure fentanyl, yes.

20 Q. What is the typical price of one of these M30 pills on
21 the street?

22 A. Well, it really depends on the quantities of drugs that
23 you traffic. If you're somebody that buys in real bulk
24 quantities, you get them a lot cheaper, and so you might be
25 able to sell them a little bit more less expensive, so they

1 would range in an area like Minneapolis, St. Paul, that is a
2 hub or distribution point for a lot of different communities
3 both in, you know, the surrounding states, I mean you might
4 be able to get them anywhere from \$10 to \$25 a pill.

5 If you go out to where I'm located now in West
6 Fargo, obviously, the transportation of the drugs getting to
7 North Dakota, somebody is taking the risk of transporting
8 that to another state, so the price is going to increase.
9 So I've seen those pills run from 40 to \$50, typically, in
10 North Dakota to as high as \$80 in Indian country or on the
11 reservations.

12 Q. Are you familiar with the North Minneapolis area of the
13 Twin Cities?

14 A. Yes, very much so.

15 Q. And how would you describe it as far as law enforcement
16 is concerned?

17 A. Well, there are certain pockets in that area that I
18 would describe as high crime areas.

19 Q. So in those high crime areas then these pills would sell
20 for anywhere from 10 to \$25?

21 A. Yes.

22 Q. Now, if you had a bag of 355 pills, what would that
23 street value be then?

24 A. Well, without a calculator, I, you know, at \$10, it
25 would be \$3,500, but, again, in price if it goes up, it

1 would be significantly more.

2 Q. Have you found it typical for drug users to have
3 quantities in that amount?

4 A. Users, no. Distributors, yes.

5 Q. Can you explain that a little more?

6 A. Sure. Your typical user is going to maybe have a pill
7 or two in their possession. They don't typically buy in
8 those kind of quantities. They generally don't have the
9 ability to do that, and so they will buy as they can afford
10 it, but traffickers, people that are involved in the
11 distribution would certainly have those types of quantities
12 to go out for a day to distribute.

13 Q. If law enforcement were to find a bag of fentanyl pills,
14 say 355 of them, and they were contained in one big bag and
15 then two smaller bags, one with say roughly 340 pills, one
16 with roughly 15 pills, what, if anything, would that tell
17 you?

18 A. Well, based on the cases that I've worked, I would say
19 that they were probably pre-packaged for distribution. That
20 smaller quantity was probably intended for somebody, so when
21 that sale is going to happen, whoever is trafficking in that
22 quantity would already have that packaged up so they don't
23 have to sit and count out, you know, I believe you said 15
24 pills or 16 pills, and so it's probably already pre-packaged
25 for distribution.

1 Q. And what distributable amounts do drug traffickers at
2 the level of say 355 tablets, what -- how do you they
3 normally distribute those drugs and in what quantities?
4 That was a long-winded question.

5 A. Again, it would depend if you're selling to maybe a
6 mid-level dealer that's going to parse them out by pill or
7 whether you're selling just to a user and sell them a pill
8 or two at a time, but, generally speaking, you know, they're
9 sold, the user quantity that we find specifically in the M30
10 pills is, you know, one or two pills.

11 Q. Would a quantity of 16 pills be more indicative of a
12 sale to a lower level drug distributor himself?

13 A. Yes.

14 Q. Are you familiar with the term "bundle"?

15 A. I am.

16 Q. What is a bundle?

17 A. Typically, in the drug world, a bundle refers to just a
18 little plastic bundle, I guess, that normally you see
19 powder-controlled substances distributed, so they will take
20 like a sandwich baggy and put the drugs down in the corner
21 and kind of twist it and then tear it off and that will
22 create a bundle and so it might get sold in gram quantities.
23 It might get sold in what's referred to an eight ball
24 quantity or something similar, but, normally, the bundles
25 are, again, have the powder types of controlled substances

1 like cocaine, heroin, powder heroin, methamphetamine, things
2 like that, not the M30 pills wouldn't get then twisted off
3 into a bindle. It would just get sold as a pill.

4 Q. Okay. And these bindles can range in quantities of
5 what? Have you seen them as low as .1 gram, .2 grams?

6 A. Sure, depending on what type of narcotic --

7 MR. DEVORE: Your Honor, objection on leading.

8 THE COURT: Overruled.

9 THE WITNESS: I would say again not based on what
10 kind of narcotic it is. If you're trafficking in heroin,
11 typically, that is so powerful and potent you might see a
12 lot smaller quantity. The user quantities for heroin is a
13 lot smaller than you might see for cocaine or crack cocaine
14 or methamphetamine. So, again, it's really going to vary
15 based on what type of controlled substances we're talking
16 about.

17 BY MR. HOLLENHORST:

18 Q. If you were to examine a case in which a person was
19 arrested with 62 bindles mixed with cocaine and then a
20 fentanyl-laced heroin in a quantities of .1 to .2 grams,
21 what would you conclude as to whether or not that person was
22 a drug distributor or a drug user?

23 A. Absolutely trafficking. Those are pre-packaged little
24 bindles for distribution.

25 Q. Is the same true with 355 tablets of fentanyl?

1 A. Yes.

2 Q. So I'm just going to finish up with a couple of
3 questions. You're familiar with the term "stash" or "hide"
4 or "safe place" or whatever?

5 A. Yes.

6 Q. What are we talking about there?

7 A. Well, a stash or a hide, you could be referring to
8 either a residence, a stash house, where, again, I think I
9 mentioned briefly earlier you might have a place where
10 you're stashing your drugs that you're distributing. You
11 might have a separate place where you're stashing your
12 money, typically, not together. Or you could be talking
13 about a vehicle that's got an after market or natural void
14 that gets used for to hide or conceal oftentimes drugs,
15 firearms, cash, things like that.

16 Q. And why would a drug trafficker use a hide or a stash in
17 a car?

18 A. Well, to thwart detention by law enforcement or anybody
19 that might be trying to rob them potentially, but, generally
20 speaking, to thwart detection by law enforcement, to keep it
21 out of view, make it more difficult for law enforcement to
22 locate that if they're out conducting a routine traffic
23 enforcement or something similar.

24 Q. Would you say that these stashes or hides are typically
25 readily available to drug traffickers?

1 A. Yes.

2 Q. In other words, they can be accessed within a few
3 seconds?

4 A. Yes.

5 Q. Finally, do drug traffickers always operate alone?

6 A. No.

7 Q. Okay. Could you explain some examples of how drug
8 traffickers use other people in their drug trafficking
9 activities?

10 A. Sure. A lot of times, well, sometimes they do operate
11 alone. I guess based on my experience and a lot of the
12 cases that I was involved in, you might have a trafficker
13 that might be utilizing somebody to maintain a stash house.
14 They might store their drugs or firearms or currency
15 somewhere, and so they might have people rent different
16 locations, buy different locations and utilize those.

17 I've also seen people utilize folks to drive them
18 to traffic in narcotics, especially if they don't have a
19 valid driver's license. They're probably going to look for
20 somebody that can drive them around to conduct their illegal
21 activities and not have to worry about being stopped by law
22 enforcement and being arrested for a driving violation or
23 license violation and then having law enforcement find their
24 drugs or proceeds from sales, things like that.

25 So, generally, when we found people that are

1 driving people or working in that capacity or that role,
2 it's somebody that they know that has a valid driver's
3 license that's getting them around.

4 MR. HOLLENHORST: I have no further questions,
5 Your Honor.

6 THE COURT: Very well. Mr. DeVore?

7 **CROSS EXAMINATION**

8 BY MR. DEVORE:

9 Q. Good morning.

10 A. Good morning.

11 Q. Mr. Otterness, how long have you been up at North
12 Dakota?

13 A. I've been Chief of Police there for approximately
14 two-and-a-half years.

15 Q. You said you've worked many, many cases involving guns
16 and drugs in your 32-year career, correct?

17 A. Yes, sir.

18 Q. I just want to cover a couple of things. Have you ever
19 had cases where people are selling drugs and did not have a
20 gun?

21 A. Yes.

22 Q. And vice versa, have you ever had cases where somebody
23 had a gun that you've been involved in in a case that were
24 not selling drugs?

25 A. I suppose, yeah, I would have to say yes, if it was a

1 different type of investigation, certainly, we've stopped
2 people with firearms and not that they possessed legally and
3 illegally.

4 Q. Sure. And sometimes people have guns for things like
5 protection; is that fair to say?

6 A. Yes.

7 Q. And that could even be more true in areas of high crime
8 like North Minneapolis; would you say that's true as well?

9 A. Well, I guess if you're talking whether somebody
10 possesses it legally or illegally, it would vary, but I
11 would say that, generally speaking, law abiding people that
12 may have a permit to carry one, certainly, and then people
13 that are involved in criminal activity, again, as we talked
14 about today might have more of a need to protect themselves
15 if they're involved in a drug trade or something similar.

16 Q. Or just somebody illegally or legally that just might
17 have a gun for protection versus for selling drugs; isn't
18 that true?

19 A. Yes.

20 MR. DEVORE: That's all I have, Your Honor.

21 Thank you.

22 THE COURT: All right. Mr. Hollenhorst, anything
23 else?

24 MR. HOLLENHORST: No further questions, Your
25 Honor.

1 THE COURT: All right. Chief Otterness, you may
2 step down. Thank you.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Mr. Hollenhorst?

5 MR. HOLLENHORST: Your Honor, the only thing we
6 would like to confer with your clerk to make sure that we
7 have all of our exhibits admitted.

8 THE COURT: All right. So this is some
9 housekeeping.

10 Members of the jury, I will ask you to step out
11 because this is going to be kind of we're going to go
12 through lists and compare, so you might as well go back to
13 the deliberation room, and we'll have you back when we're
14 finished with this. Thank you very much.

15 All rise for the jury.

16 (Jury out at 8:58 a.m.)

17

18 IN OPEN COURT WITHOUT JURY PRESENT

19 THE COURT: Okay. 24A and B are in, if you were
20 wondering.

21 MR. DEVORE: Okay.

22 THE COURT: Mr. DeVore, have you got your list?

23 I have everything in in the government's witness
24 list except 5A and 5B. I guess that's it. So I have
25 everything else on that list as in, and I don't have any

1 additional items that are in.

2 MR. DEVORE: Okay.

3 MR. HOLLENHORST: Okay. Then we are ready when
4 the Court is ready to accept the exhibits.

5 THE COURT: Okay, but before we do that. So is
6 the next thing that happens is the government is going to
7 rest?

8 MR. HOLLENHORST: Yes, Your Honor.

9 THE COURT: Okay. And then we might as well take
10 this opportunity to make sure that Mr. Scott understands his
11 right to testify or not testify.

12 Mr. DeVore, will you be calling any witnesses
13 other -- we'll set Mr. Scott aside. Will you be calling any
14 any witnesses?

15 MR. DEVORE: No, Your Honor.

16 THE COURT: Or presenting any evidence? Okay.

17 MR. DEVORE: No, Your Honor.

18 THE COURT: Mr. Scott, will you come up to the
19 podium please. You can bring your lawyer with you.

20 You have the chance to testify in front of the
21 jury if you want to do that. Do you understand that you
22 have that right?

23 THE DEFENDANT: I do.

24 THE COURT: And you also have the right to not
25 testify. And do you understand that you have that absolute

1 right?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: If you do not testify, there is an
4 instruction that I can give to the jury that says the
5 defendant, the fact that the defendant has not testified is
6 not something that can be taken into consideration or talked
7 about by you. Sometimes a defendant will want me to give
8 that instruction, and sometimes they don't want me because
9 they think it just calls attention to the fact.

10 So on the matter of whether I give that
11 instruction or not, that's something that you can talk to
12 Mr. DeVore about in making your decision.

13 THE DEFENDANT: Okay.

14 THE COURT: So I'm not going to ask you right now.
15 I just want to make sure that you understand that that's a
16 choice that you have.

17 THE DEFENDANT: I understand.

18 THE COURT: As to the choice of whether to testify
19 or not, that's not something that your lawyer gets to
20 decide. That's something that you decide for yourself. So
21 that's why I'm talking to you individually now because
22 normally if I talk to your lawyer because it's his job to
23 speak for you in court, but on this important point of
24 whether you testify or not, that's a personal decision.
25 Consult, you know, your own self or anybody you want to, but

1 in the end, it's your decision.

2 Now, is that something that you are ready to
3 decide about now or do you need to talk to somebody about
4 that?

5 THE DEFENDANT: I'm ready to decide now.

6 THE COURT: Okay. And --

7 THE DEFENDANT: I don't want to testify.

8 THE COURT: You don't want to testify, okay. All
9 right. That's good. And do you and Mr. DeVore know whether
10 you want me to give that instruction on the defendant not
11 testifying?

12 MR. DEVORE: I would like the instruction, yes.

13 THE COURT: Okay. Do you agree with that?

14 THE DEFENDANT: I agree with it.

15 THE COURT: Most of the time it's given. Okay.

16 Thank you.

17 THE DEFENDANT: Thank you.

18 THE COURT: We'll have the jury come back in then,
19 and we'll have them come in. The government will rest. The
20 defense will rest, and then I will send them on a break.
21 Can we do closings?

22 MR. DEVORE: I think we can.

23 THE COURT: Okay.

24 MS. WALCKER: If I could, Your Honor, before we
25 bring them in have a five minute break to use the rest room?

1 THE COURT: No.

2 MS. WALCKER: Thank you, Your Honor.

3 THE COURT: Can you wait until they do their
4 break?

5 MS. WALCKER: Oh, yes, I wasn't sure if you were
6 going to --

7 THE COURT: So they're only going to be here for a
8 second and then I'm going to send them out. And then I'll
9 give you a copy. That's what Cathy brought me was a copy of
10 the instructions, I'm going to give these to you, so it's
11 all good.

12 MS. WALCKER: That's perfect, Your Honor. Thank
13 you.

14 THE COURT: Well, perfect is a higher standard
15 than we hold ourselves to.

16 MR. DEVORE: We're just getting ready.

17 THE COURT: That's fine.

18 MR. DEVORE: I've had some judges that on the hour
19 have everybody on the hour take a two-minute standing break.

20 THE COURT: You guys are full of ideas about what
21 other judges do.

22 MR. DEVORE: We're always learning.

23 THE COURT: By "we" you mean you.

24 MR. DEVORE: I'm still young.

25 THE COURT: Yeah, you're just making it worse,

1 Kevin.

2 (Whereupon, jury is seated.)

3 IN OPEN COURT WITH JURY PRESENT

4 (9:07 a.m.)

5 THE COURT: Please be seated. Mr. Hollenhorst?

6 MR. HOLLENHORST: Your Honor, the Government
7 rests.

8 THE COURT: Very well. At this time, members of
9 the jury, you've heard all of the government's evidence.
10 Let me ask Mr. DeVore, if there is anything that will be
11 presented on behalf of the defense.

12 MR. DEVORE: No, Your Honor. The Defense rests.

13 THE COURT: Very well. So at this point you have
14 heard all of the evidence that is going to be admitted in
15 this case. What remains is for you to hear the closing
16 arguments of the lawyers and to have my final instructions.
17 And so this is a time when I'm going to let you have your
18 actual morning break, so let's give you a 20-minute break.
19 So we'll take a 20-minute break and then resume at 9:30.

20 So I'm going to stay behind and talk to these
21 folks a little bit, so you're now excused for your break.
22 All rise for the jury.

23 (Jury out).

24 THE COURT: Please be seated.

25

1 IN OPEN COURT WITHOUT JURY PRESENT

2 THE COURT: I've got copies of the instructions
3 for you and the verdict form.

4 So I'll leave you with these, and if there's
5 anything that you want to bring to my attention, just
6 somebody let me know, but there's no point in us all sitting
7 here. And so I'll see you back here at 9:30. We're in
8 recess.

9 (Short recess at 9:11 a.m.)

10

11 (9:29 a.m.)

12

13 IN OPEN COURT WITHOUT JURY PRESENT

14 THE COURT: We are about to bring the jury in, but
15 I just want to put on the record that counsel had no
16 objection to the jury instructions or verdict form.

17 MR. HOLLENHORST: Correct.

18 THE COURT: All right. So now it looks like you
19 need a second for your technology.

20 MR. HOLLENHORST: Yes, and just one tiny matter.
21 First of all, we checked with the court reporter. We did
22 not offer Government Exhibit 19, and we do not intend to
23 offer it, so we would like to excise that one. It was the
24 DNA lab report.

25 THE COURT: It was the lab report containing the

1 DNA evidence. I thought that was listed at the beginning as
2 the -- but anyway, are you withdrawing it?

3 MR. HOLLENHORST: Yes.

4 THE COURT: If it was admitted, it's withdrawn.

5 MR. HOLLENHORST: And then, Your Honor, one other
6 housekeeping matter, does the Court typically send the
7 Government's Exhibit list back?

8 THE COURT: No.

9 MR. HOLLENHORST: Thank you.

10 THE COURT: Are you going to tell me somebody else
11 does?

12 MR. HOLLENHORST: I wouldn't even think of it.

13 MR. DEVORE: You're the benchmark.

14 THE COURT: Bring the jury in, would you please?
15 (Jury in).

16 LAW CLERK: All rise.

17 THE COURT: Please be seated.

18 We are now going to hear the final arguments of
19 the lawyers. Under the rules, the government makes a
20 closing argument and then the defense may make a closing
21 argument and then the government has an opportunity for a
22 brief rebuttal.

23 After that, I'll give you your final instructions
24 and then you will retire to begin your deliberations.

25 Government? Ms. Walcker.

MS. WALCKER: Thank you, Your Honor.

CLOSING ARGUMENTS BY MS. WALCKER

MS. WALCKER: On June 6th, the Defendant Derrick Scott was a convicted felon who unlawfully possessed a firearm. He didn't just possess any firearm. He possessed a machine gun. That's not all he had. He had 355 fentanyl pills highly potent, dangerous drugs that he was going to sell on the street.

Let's start at the beginning. You saw the defendant drive to the Quick Stop store on June 4th in a red Chevy Tahoe. You watched the video. You saw him enter the store and start arguing with the clerk over the price of deodorant. The defendant pulled a gun out of his bag at the clerk.

You heard from the clerk, a man named Muneer Elabed, who reported the gun being drawn on him to the police. Flash forward 48 hours later, the defendant was in the same red Chevy Tahoe with his girlfriend in the same area of North Minneapolis. Same license plate, no shirt, same bag.

You heard from Sergeant Lepinski that these types of bags are commonly used to carry guns. You heard that it took an unusually long time to stop. You heard from Deputy Peterson and Sergeant Lepinski said that that was enough

1 time for the time to stash his guns and drugs in the console
2 of the car.

3 You saw the search of the car, how easily the
4 police popped open that hidden compartment. It had
5 obviously been tampered with before. Police immediately
6 spotted that switch. The gun matched the description of the
7 gun the defendant had at the Quick Stop days earlier. The
8 gun handle was closest to the defendant. The gun and pills
9 were stashed together. The pills placed right on top of the
10 gun within the defendant's reach.

11 You just heard from the drug expert Chief Denis
12 Otterness how significant this was, how the defendant
13 carried the gun for his drug sales.

14 You heard from Agent Nate Boyer that when he was
15 arrested, the defendant said, "I will still be the king when
16 I get out. I'll get another switch when I get out" after
17 his arrest. He used the word "switch." He, obviously, knew
18 what a switch was, and he was going to get another. That
19 was his switch in the car, and he was going to get another
20 switch when he got out.

21 You heard that the defendant's DNA and
22 fingerprints were found on the gun and the gun accessories.
23 At the beginning of this trial, we told you that on
24 June 6th, the defendant possessed a gun, a machine gun and
25 fentanyl. Now you know that this is what happened, but you

1 also know why, he was going to distribute the Fentanyl. You
2 heard from the drug expert the gun was for protection in
3 case a drug deal went south to defend his title as king.

4 Members of the jury, you've heard a lot of
5 testimony, and you've seen many exhibits during this trial,
6 and we thank you for your attention during this trial. You
7 all know what this case is about. It's now time for you to
8 consider all of the evidence and decide a verdict in this
9 case.

10 I now want to talk about the law in this case and
11 explain how the evidence proves that the defendant is guilty
12 beyond a reasonable doubt.

13 The government has to prove each element beyond a
14 reasonable doubt. Now, Judge Ericksen will tell you that
15 beyond a reasonable doubt does not mean beyond all doubt.
16 It is based on reason and common sense. Judge Ericksen will
17 also tell you that the presumption of innocence remains with
18 the defendant unless and until the government proves each
19 element of the crime, and that is what we have done in this
20 case.

21 The defendant is charged with four crimes,
22 Count 1 charges the defendant with possessing with the
23 intent to distribute Fentanyl.

24 Count 2 charges the defendant with possessing and
25 carrying a machine gun during and in relation to a

1 drug-trafficking crime and in furtherance of a
2 drug-trafficking crime, that is, possessing fentanyl with
3 the intent to distribute it.

4 Count 3 charges the defendant with possessing a
5 machine gun.

6 And Count 4 charges the defendant with being a
7 felon in possession of a firearm.

8 Now, there's two buckets of crimes here. There's
9 a drug trafficking count, Count 1; and there's the gun
10 counts, Counts 2 through 4. Let's talk about the drug count
11 first.

12 Count 1 charges the defendant with possessing
13 fentanyl with the intent to distribute it. Judge Ericksen
14 will instruct you that possession with the intent to
15 distribute fentanyl has three elements.

16 First, the defendant possessed a mixture or
17 substance containing a detectable amount of fentanyl.
18 Second, the defendant knew he possessed a controlled
19 substance. And, third, the defendant intended to distribute
20 some or all of the fentanyl to another person.

21 As to the first element, did the defendant possess
22 some quantity of fentanyl?

23 Yes, the drugs were next to the defendant within
24 his reach, directly next to his gun and his magazine that
25 had his DNA and his fingerprints, and we know that the drugs

1 contained some fentanyl. The parties have stipulated about
2 that fact. The Judge instructed you during trial that you
3 must treat those facts as having been proven. It's not in
4 dispute. The defendant possessed the drugs and those drugs
5 were fentanyl. The evidence proves the first element beyond
6 a reasonable doubt.

7 Now, turning to the second element, did the
8 defendant know he was in possession of a controlled
9 substance?

10 Now, the Judge will instruct you that it does not
11 matter whether the defendant knew the substance was
12 fentanyl. It's enough that the defendant knew it was some
13 kind of a controlled substance. The defendant clearly knew
14 that the pills were fentanyl.

15 First of all, the pills were marked as M30 pills.
16 You heard from drug expert Chief Otterness that M30 is a
17 common marking for fentanyl, that fentanyl is distributed
18 using distinctive blue pills with an M30 stamp. These were
19 very distinctive pills. Small pills because fentanyl is
20 extremely potent, even a small amount can kill you. Ask
21 yourselves what else could they be? These clearly weren't
22 355 pills of Advil or Tylenol. They said M30. Use your
23 common sense. The evidence proves the second element beyond
24 a reasonable doubt.

25 Turning to the final element, element 3, did the

1 defendant intend to distribute some or all of the fentanyl?

2 You heard from drug expert Denis Otterness this
3 morning that they were a distributable amount of fentanyl,
4 that the smaller bag was pre-packaged for distribution.
5 Chief Otterness testified that a user amount of fentanyl is
6 typically one pill or less, that fentanyl is a highly potent
7 substance, that even a small amount as little as two
8 milligrams of pure fentanyl can kill a person.

9 This was 355 pills. This was not three pills.
10 This was not four pills, this was not five pills. It was
11 355 pills. You heard from Chief Otterness that the street
12 value of a single pill of fentanyl in North Minneapolis can
13 range from about \$10 to \$25 and is valued much higher
14 elsewhere. In this case, there were 355 pills valued at
15 least at \$3,500 and up to more than \$8,000. The defendant
16 had the pills because he was going to sell them on the
17 street. He was going to sell them on the street for a lot
18 of money.

19 What evidence do we have of distribution? One of
20 the things you can consider is the defendant's March 2020
21 drug sale. Now, this evidence is not to be used to show
22 that the defendant sold drugs then so he was selling drugs
23 now. It's to show his intent in possessing the fentanyl,
24 that he intended to distribute the drugs.

25 You heard from Sergeant Dubay that the defendant

1 sold drugs in a controlled buy from his vehicle in North
2 Minneapolis. He sold fentanyl, cocaine and heroin, 62
3 bindles. You heard Sergeant Dubay call this area a drug
4 market. You heard that it's only about 15 blocks from where
5 the defendant was caught on June 6th with the fentanyl,
6 similar facts here. You saw that the 62 bindles of drugs
7 were found stashed in his pants after that drug sale. You
8 saw that video. The evidence has proven all three elements
9 beyond a reasonable doubt.

10 The defendant is guilty of Count 1, beyond a
11 reasonable doubt.

12 Now, let's talk about the second group of charges
13 here, the gun charges, Counts 2 through 4. Now, there's a
14 lot of overlap between these charges. For all three of the
15 charges, you need to find that the defendant knowingly
16 possessed the gun, so let's talk about that first.

17 How do we know that the defendant knowingly
18 possessed the gun? First of all, where was the gun? It was
19 directly within his arm's reach right next to him in the
20 vehicle. He could have reached down and grabbed the gun.
21 The handle was facing him.

22 Members of the jury, if that's all you heard, that
23 would be enough for you to find the defendant in possession
24 of the gun. But there's more.

25 How else do we know he possessed it? His DNA.

1 You heard from forensic scientist this morning Kaaren Simon
2 that the defendant's DNA was found on the gun. His DNA was
3 also found on the magazine that holds the ammunition for
4 that gun. His fingerprint was also found on the magazine
5 with the gun.

6 Now, you heard there was another person in the
7 vehicle with the defendant, Mikita Jackson. Her DNA was not
8 on the gun. Her DNA was not on the magazine. Members of
9 the jury, how does your DNA get on an object? How does it
10 get on the gun? By touching it. The defendant clearly
11 touched it. He was in possession of the gun. Use your
12 common sense.

13 Finally, you saw video footage, and you heard
14 testimony from the Quick Stop clerk about how the defendant
15 threatened him with a gun two days earlier. The gun matched
16 this description of the gun. He pulled it from the same bag
17 he was wearing when he was stopped on June 6th. What does
18 all of this evidence tell you? There is no question that
19 the defendant possessed the gun on June 6th.

20 Now, let's talk about the three gun charges in
21 more detail. Let's start with the easiest first, felon in
22 possession of a firearm, Count 4. Judge Ericksen will
23 instruct you that the crime of being a felon in possession
24 of a firearm has four elements.

25 First, the defendant had been convicted of a crime

1 punishable by imprisonment for more than one year. In other
2 words, he was a felon.

3 Second, the defendant knew he had been convicted
4 of a crime punishable by imprisonment of more than one year.
5 In other words, he knew he was a felon.

6 Third, after that, the defendant knowingly
7 possessed the firearm.

8 And, fourth, the firearm crossed the state or
9 national line at some point before the defendant possessed
10 it on June 6th.

11 We just talked about the third element,
12 possession. The gun was within his arm's reach, his DNA,
13 his fingerprints. You can find this element beyond a
14 reasonable doubt.

15 Now, the defendant has stipulated or agreed to the
16 other three elements: Elements 1, 2, and 4. Judge Ericksen
17 has instructed you that you are take these stipulations as
18 facts or as proven. The defendant has stipulated that he
19 was convicted of a crime punishable by a term of
20 imprisonment exceeding one year and that he knew he had been
21 convicted of a crime punishable by a term of imprisonment
22 exceeding one year. In other words, the defendant was a
23 felon, and he knew he was a felon. You can find that fact
24 as proven.

25 The parties have also stipulated that the firearm

1 was manufactured outside of the State of Minnesota. In
2 other words, the gun necessarily had to cross a state line
3 in order to be in Minnesota on June 6th when the defendant
4 possessed it. You can find that element as proven.

5 The evidence has proven all four elements beyond a
6 reasonable doubt. The defendant is guilty of Count 4.

7 Now, let's talk about Count 3, which charges the
8 defendant with possessing a machine gun. Count 4 charges
9 the defendant with possessing a firearm as a felon. This
10 count, Count 3, charges the defendant with possessing
11 machine gun, specifically, which is an illegal type of gun
12 to possess.

13 Judge Ericksen will instruct you that there are
14 three elements for Count 3:

15 First, the defendant knowingly possessed the
16 firearm.

17 Second, that the firearm was a machine gun.

18 And, third, that the defendant knew the gun was a
19 machine gun or he was aware of the firearm's physical
20 characteristics that made it a machine gun, and you can find
21 either, but the government has proven both in this case.

22 And we already talked about possession, element 1.
23 You can find that the evidence has proven the first element
24 beyond a reasonable doubt.

25 Turning to the second element, that the firearm

1 was a machine gun. There was a stipulation that the gun was
2 a machine gun. You can find that element 2 has been proven
3 beyond a reasonable doubt.

4 That leaves the third element, that the defendant
5 knew the firearm was a machine gun or that he was aware of
6 the firearm's physical characteristics that made it a
7 machine gun. How do you know that the defendant knew that
8 the gun was a machine gun or that it had a switch?

9 First, the defendant's own words. You heard Agent
10 Boyer testify that when the defendant was arrested, he said
11 he would get another switch when he got out. The defendant
12 brought up the word "switch". Members of the jury, you
13 don't use the word switch if you don't know what a switch
14 is. He knew what a switch was, and he was going to get
15 another one.

16 The defendant also had a loaded high capacity
17 magazine with his DNA and his fingerprint. You heard that
18 the high capacity magazine could hold 24 rounds of
19 ammunition. You have an extended magazine if you have a
20 switch. After all, that is what a switch is designed to do
21 to fire numerous rounds of ammunition within seconds. He
22 knew it was a switch.

23 You heard from ATF expert Anthony Arena yesterday
24 that switches have physical characteristics that are unique,
25 that are distinctive. That is a significant part of the

1 gun. Use your common sense. You don't need to be an expert
2 to see the switch on the back end of the firearm. It's not
3 what it looks like in movies. Use your common sense.

4 You heard the testimony of the Quick Stop clerk
5 who testified that he saw the defendant with a gun on
6 June 4th, that the gun matched the physical description of
7 the gun that the defendant was found with on June 6th. He
8 had the gun for at least two days, maybe more that we know
9 of. He had plenty of time to become familiar with the
10 physical characteristics of the gun.

11 The evidence has proven the third element beyond a
12 reasonable doubt. The defendant is guilty of Count 3.

13 Now turning to the final count, Count 2, which
14 charges the defendant with possessing and carrying a machine
15 gun in furtherance of and during and in relation to a
16 drug-trafficking crime. Judge Ericksen will instruct you
17 that there are three elements for Count 2:

18 First, the defendant committed the crime of
19 possession with the intent to distribute fentanyl. This is
20 the drug-trafficking crime that's been charged in Count 1.

21 Second, the defendant knowingly possessed the
22 firearm equipped with a switch in furtherance of that
23 drug-trafficking crime or the defendant carried the firearm
24 during and in relation to a drug-trafficking crime or both.
25 In essence, there's two ways that this element can be

1 proven, and the government has proven both. They're very
2 similar.

3 Third, the firearm was a machine gun. Now, we've
4 already talked about the first and the third elements. We
5 talked about the first element earlier when we discussed the
6 drug count, Count 1, how the evidence proves that the
7 defendant possessed the fentanyl with the intent to
8 distribute it. We also talked about the machine gun,
9 Count 3. You can assume that element is proven.

10 That leaves the second element. Did the defendant
11 knowingly possess the firearm in furtherance of and during
12 in relation to the drug-trafficking crime? We've already
13 talked about possession, how the defendant knowingly
14 possessed the firearm. The only issue to address is whether
15 the defendant possessed the firearm during and in relation
16 to a drug-trafficking crime or in furtherance of a
17 drug-trafficking crime.

18 You heard the testimony of Sergeant Adam Lepinski
19 that the gun was found directly next to the drugs. Next to
20 the bag of fentanyl pills that the defendant planned to sell
21 on the street. You saw videos and pictures of the 355
22 fentanyl pills, the bag directly on top of the gun within
23 the defendant's reach. The defendant was carrying them in
24 his bag, the same bag he was carrying a gun in days earlier
25 until the police pulled him over, then he stashed them

1 directly next to him in the center console. You can see the
2 handle facing him where he had stashed it. He was clearly
3 carrying it in relation to the drugs.

4 You heard the extensive testimony of Chief Denis
5 Otterness this morning about the inherent danger of drug
6 trafficking, how firearms are used to protect the trade,
7 protect the drug sales.

8 You heard Chief Otterness testify about the street
9 value of a bag of fentanyl pills. He testified how a bag of
10 -- how only one pill can range from about 10 to \$25. Here
11 the defendant had 355 pills. That's valued at more than
12 \$3,500 and up to more than \$8,000 on the street. He was
13 possessing the drugs, and he was possessing the gun. He was
14 using the gun to protect his drugs in furtherance of
15 possessing with the intent to distribute them.

16 Members of the jury, use your common sense. The
17 defendant had the gun because he was selling fentanyl pills
18 on the street. You can find that the evidence has proven
19 the second element. The defendant is guilty of Count 2.

20 Now, after rendering your verdict on Count 2,
21 Judge Ericksen will instruct you that you are to answer one
22 additional question for this count if you find that the
23 defendant is guilty. You will be asked to answer whether
24 the defendant knew the firearm was a machine gun or was
25 aware of the gun's physical characteristics that made it a

1 machine gun.

2 We've already answered this question, which is an
3 element of Count 3. The evidence proves that the answer is
4 yes.

5 Members of the jury, this is a straightforward
6 case. On June 6th, the defendant stashed the gun and the
7 fentanyl when the police pulled him over. He was hiding the
8 guns and the drugs. He was possessing the gun and the
9 fentanyl with the intent to distribute it. At that time, he
10 was a convicted felon.

11 Members of the jury, rely on your common sense
12 here. Based on all this evidence, we ask you to return a
13 verdict of guilty as to all counts. Thank you.

14 Thank you, Ms. Walcker.

15 Mr. DeVore?

16
17 **CLOSING ARGUMENTS BY MR. DEVORE**

18 MR. DEVORE: Good morning.

19 Yesterday I stood in front of you, and I told you
20 the most important thing is to hold the government to the
21 strongest burden of proof that we have in our legal system,
22 which is proof beyond a reasonable doubt. And I told you
23 what the evidence was going to be in this case, and it came
24 in exactly as the way I said it would come in.

25 We have a Tahoe that was pulled over by the

1 police. We have a search of the vehicle. Mikita Jackson
2 was driving the Tahoe. Mr. Scott was in the passenger seat.
3 They found a gun and a bag of drugs. That's all they have.

4 Everything that you heard about the intent to sell
5 or the intent to use a machine gun to further the sale of
6 drugs is complete speculation. They have no evidence to
7 prove that. They have no undercover CI's. They have no
8 recorded videos. They have no -- anything out there, no
9 admissions, nothing to say that what Mr. Scott was doing, if
10 they can prove that he possessed the drugs, what he intended
11 to do with those drugs. Zero.

12 Why is that important? Because the burden is on
13 the government. It's their case. They brought this case.
14 They charged Mr. Scott with these crimes. Our system of law
15 is such that when a government brings the case against an
16 individual, they have to prove the case. They have to prove
17 all of the elements. And you as the jury have to go back
18 and decide whether or not they've done that.

19 And we talked about the level of proof, proof
20 beyond a reasonable doubt. It's not beyond all possibility
21 of doubt. Nobody would hold you to that level of certainty,
22 but it should be such certainty level that you feel good
23 about the decision, that you don't have a nagging suspicion
24 that I don't know. I don't know if I feel quite right about
25 that or if there was a question that should have been asked

1 or if there was a piece of information that should have been
2 explained a little bit further. That's not on Mr. Scott or
3 me to clarify or to fix that or fill in that gap or fix that
4 hole or what have you. That's a hundred percent on the
5 government.

6 Why is that important? Because the government
7 wants you, just like I told you yesterday morning, the
8 government wants you to take and jump over some stuff that
9 they don't really have good explanation for. They don't
10 have proof what Mr. Scott -- if they can prove that he
11 possessed the drugs, what he intended to do with the drugs.
12 They just make this leap, and they bring in an officer that
13 testifies based on his knowledge, but they don't have any
14 proof. They have speculation.

15 Now, when I heard Chief Otterness testifying this
16 morning, I heard him use word like "typical." Typical. The
17 government has a burden of proof to show beyond a reasonable
18 doubt. It's not typical. We're not here to argue about
19 what's typically done on the streets. We're here to argue
20 about whether or not Mr. Scott committed the crime.

21 The 2020 case. It's brought in, that's the 62
22 bindles. Why was that brought in, right? That's not what
23 Mr. Scott is on trial for. Okay. It's brought in for the
24 government to show intent. Okay. We all know the effect of
25 that and what the real meaning of that is, but look at the

1 differences in some of that.

2 And we heard Chief Otterness testify today that
3 it's so common that the guns are used to protect drugs
4 because it's a dangerous business, right? Well, they
5 introduced evidence of Mr. Scott being arrested and drugs
6 being seized 62 bindles. No gun. Okay. No gun involved.

7 And look at even the difference in the way that
8 that packaging was done. All rolled up into little bindles,
9 right? They made a big deal about these bindles. They put
10 them in the corner, they pull them up, and they twist them
11 up and that's what people buy, right? That's exactly the
12 stuff that Chief Otterness is talking about.

13 What's the difference between that and this case?
14 This case there's just a bag of pills, right? That's all we
15 had, right? They're asking you to say, okay, take that bag
16 of pills, find that Mr. Scott possessed those, even though
17 there was no DNA evidence or anything linking Mr. Scott to
18 the drugs, right? And they want you to then make that jump
19 and say because he had these drugs and because he had that
20 gun, that meant that he was going to sell the drugs, and it
21 meant he was going to use this gun to further his sale of
22 the drugs. And they used Chief Otterness to prove that
23 point.

24 You have to decide whether or not Chief
25 Otterness's testimony, who had nothing to do with this case,

1 wasn't involved in the arrest, all he was brought in from
2 Fargo, from North Dakota, he was brought in to testify about
3 what's typical. I submit to you that typical is not enough
4 when we're talking about proof beyond a reasonable doubt.

5 Now, Kaaren Simon testified today about the DNA on
6 the gun, but she couldn't tell you where the swabs were
7 taken from from the gun, so we don't know if it was on the
8 handle, on the barrel, or where it was from, so there was no
9 evidence offered to you regarding any DNA evidence
10 connecting Mr. Scott to the actual switch.

11 So why is that important? Because he's got to
12 know that there's a switch on that gun. He's got to know
13 what a switch is that made it a machine gun. Again, ask
14 yourself what is the evidence that they presented to you to
15 prove that point?

16 And, by the way, the store clerk, we heard
17 testimony in evidence from the store clerk at the Quick Stop
18 from an incident two days prior. I didn't hear that witness
19 identify Mr. Scott. I heard him talk about a man. Okay.
20 Just a point. Again, it's a point if it was something that
21 should have been addressed, covered, fixed by the
22 government, it's one of those things that if it wasn't done
23 right, then you got to hold it against the government.

24 In the end, you have to decide whether or not the
25 evidence is sufficient to show that Mr. Scott, number one,

1 that he possessed those drugs in the car that belonged to
2 Mikita Jackson.

3 Number two, that he intended to sell those drugs
4 or distribute those drugs.

5 On Count 1, that's the possession with intent to
6 distribute, the critical element is whether or not the
7 government can prove that Mr. Scott possessed those drugs
8 with the intent to sell or distribute, and I submit to you
9 that they have failed to prove that point.

10 They want you to make the leap, make sure the
11 facts are there, make sure the evidence is sufficient and
12 that it was proven beyond a reasonable doubt for you to make
13 that decision. And if you listen to the limited testimony
14 that we have regarding Mr. Scott's involvement, not just
15 opinions, they failed. They can't prove that count.

16 And, quite simply, if they can't prove Count 1,
17 they can't prove Count 2, because Count 2 requires finding
18 Mr. Scott guilty of Count 1. You have to find that he was
19 possessing the drugs with the intent to distribute as the
20 first element and then you move into the gun. Right? And
21 even there they have to prove beyond that that he used that
22 gun in furtherance of, in relation to the distribution of
23 the drugs.

24 Again, what evidence did they offer you, factual
25 evidence did they offer you to prove that point? Or was it

1 just opinion and speculation? That's all that was. So the
2 government is going to, on Count 2, the government fails on
3 the first two elements.

4 Now, with respect to Count 3, they still have to
5 prove that Mr. Scott knew that that gun was a machine gun or
6 had machine gun capabilities. Again, you'll have to decide
7 whether or not the government met that burden of proof.
8 There's no specific evidence that they offered to prove that
9 point, and I submit to you that they have failed on that
10 count as well.

11 Finally, the last one is the possession of a
12 firearm by a felon. I'll let you guys decide that whether
13 or not the government has proved each one of those elements,
14 but I want you to really think about what it is that they
15 provided to you that said Mr. Scott possessed the drugs, and
16 he intended to sell them or distribute them and that he
17 possessed the firearm, the machine gun, for the purpose of
18 selling those drugs.

19 When you go back into the deliberation room,
20 you're going to have a chance to talk with each other and
21 talk about what evidence the government put forth.
22 Mr. Scott didn't present any evidence, but he doesn't have
23 to. Mr. Scott didn't testify, but he doesn't have to.
24 That's because he's presumed innocent until the government
25 and unless the government proves him guilty beyond a

1 reasonable doubt.

2 The government has failed to prove their case
3 against Mr. Scott. And if you find that the government has
4 failed to do that, then you should find him not guilty.
5 That's what we ask you to do here today. Tell the
6 government they failed to prove their case. Mr. Scott is
7 not guilty.

8 Thank you.

9 THE COURT: Thank you, Mr. DeVore.

10 Ms. Walcker, anything else?
11

12 **REBUTTAL ARGUMENTS BY MS. WALCKER**

13 MS. WALCKER: Members of the jury, I won't keep you
14 much longer. Use your common sense. Trust your common
15 sense. I want to spend the next few minutes talking about
16 some of the points the defense counsel just raised, but keep
17 in the back of your mind trust your common sense.

18 The defense has just suggested that the government
19 must prove everything beyond a reasonable doubt. For
20 example, the government must prove that the man that entered
21 the Quick Stop store on June 4th, two days earlier, was the
22 defendant. But that's not the standard. The government
23 must only prove all of the elements of the crimes charged
24 beyond a reasonable doubt, not all of the facts.

25 Now, the evidence is strong that the man who

1 entered the Quick Stop store two days earlier was in fact
2 the defendant. Just because the clerk had never met, didn't
3 know the name of the defendant, does not mean it wasn't him.
4 Sergeant Lepinski identified him as the defendant. And you
5 can watch the videos for yourselves. You can see the man
6 sitting right here. It is clearly Derrick Scott. There's
7 no question. There's no evidence to the contrary. Use your
8 common sense.

9 The defense also argues that the bag of blue pills
10 in the car next to the defendant by its nature is not enough
11 to show his intent to distribute. That even if you assume
12 that the pills were there, that's not evidence of his intent
13 to distribute, that there was no recording of a confidential
14 informant or a controlled buy there.

15 First of all, members of the jury, the defendant
16 is not charged with distribution. He is not charged with
17 distributing fentanyl. He is charged with possession of
18 fentanyl with the intent to distribute it. The government
19 is not required to prove that he distributed the pills. The
20 government must only prove that he possessed the pills with
21 the intent to distribute it. The government has clearly
22 proven this. He clearly possessed the fentanyl. It was
23 within his arm's reach next to the gun with his DNA, next to
24 the magazine with his DNA, his fingerprints. Members of the
25 jury, we've gone through all of this evidence.

1 Now, with respect to the defendant's intent, we
2 all know there is no way of getting into the defendant's
3 head. The only way that we can do that is if the defendant
4 tells you what is in his head, but you can logically infer
5 what's in a person's head by his actions.

6 Now, remember, Judge Ericksen instructed you that
7 there is no difference between what's called direct and
8 circumstantial standing evidence. What does this mean?

9 Say this morning you open your front door and you
10 see footsteps in the snow leading up to your front door.
11 You didn't see anyone come up to your door. You didn't hear
12 the doorbell ring, but you can see the footprints in the
13 fresh fallen snow leading up to your door. You can
14 logically infer that someone has come to your front door.
15 That's circumstantial evidence, and it's to be given the
16 same weight as direct. They are the same. There is no
17 distinction in the law.

18 So you don't need the defendant to tell you what's
19 in his head because he planned to sell the fentanyl. You
20 know this from the evidence. You don't carry 355 highly
21 potent dangerous fentanyl pills for personal consumption.
22 You don't. Think about it. Those are the options. 355
23 highly dangerous potent fentanyl pills for personal use or
24 for distribution? There's no other reasonable explanation.
25 Use your common sense.

1 You heard that these pills are valued at more than
2 \$3,500 on the street. Pills that are extremely dangerous in
3 small dosages. This was a distribution amount. One of the
4 bags was already pre-packaged for distribution. This is not
5 complete speculation. Circumstantial evidence is not
6 speculation. Use your common sense. Don't check it at the
7 door.

8 Now, remember that this case started as a gun
9 investigation. You heard about the March 2020 incident.
10 That started as a drug investigation. This was different.
11 The police were investigating the defendant for a gun.
12 There was no controlled buy or confidential informant
13 because they were focused on the gun, but you don't ignore
14 the evidence that was found in the vehicle with the gun, the
15 355 fentanyl pills.

16 Now, you heard Chief Otterness explain how this
17 all fits together, that he had the gun to protect his drugs,
18 that he was going to sell them. There's no leap to conclude
19 that the drugs were there because the defendant owned them,
20 and he intended to sell them. There is simply no other
21 reasonable explanation for the defendant's possession of the
22 drugs other than for distribution, plain and simple.

23 Now, the defense also made a few points about the
24 forensic testing, about the DNA. What he failed to mention
25 is that Sergeant Lepinski testified yesterday that the gun

1 and the magazine were both swabbed for the defendant's DNA,
2 that those were sent to the lab for testing. You heard from
3 the DNA forensic scientist Kaaren Simon this morning that
4 that DNA was a direct match. There was no other
5 explanation. It was his DNA on the gun.

6 But even if you disregard that, his fingerprints
7 were also found on the magazine directly next the gun, the
8 part that goes into this very same gun. You saw that
9 fingerprint stipulation. You know they did forensic testing
10 on the gun. They looked for fingerprints. His DNA, his
11 fingerprints.

12 But you don't know forensics in this case either
13 because the defendant was literally sitting next to the gun.
14 He had it right there. There is no question that he touched
15 the gun.

16 Members of the jury, what you have learned in this
17 trial is that the defendant was unlawfully in possession of
18 a machine gun and fentanyl with the intent to distribute it.
19 Consider all of the evidence. Look at all of those things
20 together when considering your verdict and return the only
21 verdict that is consistent with all of the evidence in this
22 case and that is guilty on all four counts. Thank you.

23 THE COURT: Thank you, Ms. Walcker.

24
25 **FINAL JURY INSTRUCTIONS**

1 THE COURT: All right. Members of the jury, I'm
2 now going to give you my final instructions. Before I do
3 that, I have to dismiss our alternate juror. And the
4 alternate is Bruce Lindert. So, Mr. Lindert, if you would
5 just go back to the jury room, collect anything you have,
6 and then Cathy, who was sitting here, will meet you there,
7 and she'll give you further instructions.

8 JUROR: Thank you, Your Honor.

9 THE COURT: Yes. And I'll come back and chat you
10 with you. Thank you very much. Would you like to stand up
11 where you are and just take a stretch? Why don't you do
12 that? Don't leave though.

13 All right. Now the instructions I gave you at the
14 beginning of the trial and during the trial all remain in
15 effect, but I'm going to give you additional instructions
16 now. Of course, you have to follow the instructions I gave
17 you earlier as well as those I give you now. You must not
18 single out some instructions and ignore others. They're all
19 important, not all of the ones I gave you at the beginning
20 are going to be repeated here.

21 It's your duty to find from the evidence what the
22 facts are, and then you apply the law as I give it to those
23 facts. You must follow my instructions on the law even if
24 you thought the law was something different or that it
25 should be different. The law demands of you a just verdict

1 unaffected by anything except the evidence, your common
2 sense, and the law as I give it to you.

3 To review evidence, I went through this at the
4 beginning, but it consists of the testimony of witnesses and
5 the documents and other things received as exhibits and the
6 facts that have been stipulated. That is, formally agreed
7 to by the parties. And you can use your reason and your
8 common sense to draw deductions or conclusions from facts
9 that have been established by the evidence in this case.

10 Remember that certain things are not evidence.
11 Statements, argument, questions, comments by lawyers
12 representing the parties are not evidence in the case.

13 Objections aren't evidence. If I sustained an
14 objection to a question, ignore the question and, you know,
15 don't try and think what the answer might have been. I
16 don't think we had any big instances of that, but that law
17 remains as I told you at the beginning.

18 If you might have seen something or heard
19 something outside of the courtroom. That's not evidence.
20 And then there was a piece, there was some evidence that was
21 received for a limited purpose only and that's only evidence
22 for that limited purpose. I'm going to talk to you a little
23 bit more about that in a minute.

24 When you decide what the facts are, you may have
25 to decide what testimony you believe or don't, and remember

1 that you can believe everything that a witness said or none
2 of it or only part of it. In deciding what to believe, you
3 can consider the witness's apparent intelligence, their
4 chance to have seen or heard the things that they testified
5 about, their memory, any motives they might have for
6 testifying a certain way, their manner while testifying and
7 whether they said something different at an earlier time and
8 the general reasonableness of their testimony. And, of
9 course, as you recall, the extent to which the testimony is
10 consistent with any evidence you believe.

11 Keep in mind that people sometimes hear things
12 differently or see things differently and sometimes they
13 forget things. You need to consider whether if there was a
14 contradiction, it's an innocent misrecollection or a lapse
15 of memory or an intentional falsehood and that may have to
16 do with whether it's an important fact or an unimportant
17 detail.

18 Now, the indictment in this case charges four
19 different crimes. You are going to pay attention to each
20 one separately. So just because you have a verdict of
21 guilty or not guilty on one doesn't mean you have to --
22 consider them each separately.

23 Count 1 is possession with intent to distribute
24 fentanyl.

25 Count 2 charges possessing and carrying a machine

1 gun in furtherance of and during and in relation to a
2 drug-trafficking crime.

3 Count 3 charges commission of a crime, the crime
4 of possession of a machine gun.

5 And Count 4 charges that the defendant committed
6 the crime of being a felon in possession of a firearm.

7 The defendant has pleaded not guilty to each of
8 those charges.

9 And the indictment was the document that formally
10 charged the defendant and got this trial process going.
11 It's not evidence. At the beginning of trial, I instructed
12 you that you have to presume the defendant to be innocent
13 and, thus, the defendant began the trial with a clean slate
14 with no evidence against him.

15 The presumption of innocence alone is sufficient
16 to find a defendant not guilty and can be overcome only if
17 the government proves during a trial beyond a reasonable
18 doubt each element of the crime charged.

19 Again, each count charges a separate crime.
20 Consider each count separately and return a separate verdict
21 for each count, and there will be a verdict form for you.

22 There is no burden on a defendant to prove that he
23 is not guilty. Instead, the burden of proof remains on the
24 government throughout the trial. The law never imposes on a
25 defendant in a criminal case the burden or duty of calling

any witnesses or producing any evidence. The fact that the defendant did not testify must not be considered by you in any way or even discussed in arriving at your verdict.

Count 1, the crime of possession with intent to distribute fentanyl. Three elements. The defendant was in possession of fentanyl. Two, the Defendant knew that he was in possession of a controlled substance. And, three, the defendant intended to distribute some or all of the fentanyl to another person.

If you find these elements unanimously and beyond a reasonable doubt, then you must find the Defendant guilty of the crime of possession with intent to distribute fentanyl. Record your determination in paragraph 1 of the verdict form.

Some definitions. "Distribute" as used in these instructions means to deliver or to transfer possession or control of something from one person to another. The term to distribute includes the sale of something by one person to another.

The definition of "with intent to distribute" means to have in mind or to plan in some way to deliver or to transfer possession or control over a thing to someone else.

In attempting to determine the intent of a person, you may take into consideration all of the facts and

1 circumstances shown by the evidence received in the case
2 concerning that person.

3 In determining a person's intent to distribute
4 controlled substances, you may consider among other things
5 the purity of the substance, the quantity of the substance,
6 the presence of equipment used in processing or sale of
7 controlled substances, weapons, cash.

8 The government must prove beyond a reasonable
9 doubt that the defendant intended to distribute the
10 controlled substance alleged in the indictment.

11 Now, you heard testimony that was admitted for a
12 limited purpose, and this was the testimony that the
13 defendant sold a quantity of drugs to a police informant in
14 2020, March 23rd of 2020 in North Minneapolis, followed by
15 his arrest in which he was found in possession of 62 small
16 bindles of suspected drugs that later tested positive for
17 fentanyl-laced heroin and cocaine. You may consider this
18 evidence only if you unanimously find that it's more likely
19 true than not true that the defendant committed that act.

20 This is a lower standard than proof beyond a
21 reasonable doubt, and you decide that by considering all the
22 evidence related to that 2020 incident and then deciding
23 whether that is more believable.

24 If you find that it hasn't been proved, then, of
25 course, disregard it. If you find that it has been proved,

1 then you can consider it but only for the limited purpose of
2 deciding whether the defendant had the state of mind or
3 intent necessary to commit the crime charged in Count 1,
4 namely, the intent to distribute fentanyl. Give this
5 evidence the weight and value that you believe it's entitled
6 to receive.

7 Even if you find that the defendant may have
8 committed a similar act in the past, that's not evidence
9 that he committed an act in this case. You can't convict a
10 person simply because you believe he may have committed
11 similar acts in the past. The defendant is on trial here
12 only for the crimes charged in the indictment, and you may
13 consider the evidence of prior acts only on this issue of
14 the state of mind or intent with respect to Count 1.

15 Now, a controlled substance includes fentanyl.
16 Fentanyl has a technical name. I'm trying to tell you what
17 the statute calls it:
18 N-phenyl-N[1-(2-phenylethyl)-4-piperidinyl]propenamide.
19 It's a controlled substance. It is solely for you to
20 determine whether or not the government has proven beyond a
21 reasonable doubt that the defendant possessed with intent to
22 distribute fentanyl as charged in Count 1 of the indictment.

23 A note on possession. There is several kinds of
24 it. It can be actual or constructive. A person can be in
25 possession solely or jointly.

1 A person who knowingly has direct physical control
2 over a thing, at a given time, then is in actual possession
3 of it.

4 A person who, although they're not in actual
5 possession, has both the power and the intention at a given
6 time to exercise dominion or control over a thing, either
7 directly or through another person, is then in constructive
8 possession of it.

9 If one person alone has actual or constructive
10 possession, possession is sole. If two or more share actual
11 or constructive possession, possession is joint, but this is
12 all possession. Whenever the word possession is used in
13 these instructions, it includes actual as well as
14 constructive and sole as well as joint.

15 Now, Count 2, the crime of possessing a firearm in
16 furtherance of a drug-trafficking crime and carrying a
17 firearm during and in relation to a drug-trafficking crime
18 is charged in that second count has three elements:

19 One, the defendant committed the crime of
20 possession with intent to distribute fentanyl as charged in
21 Count 1.

22 Two, the defendant knowingly possessed a firearm,
23 that is a Glock 41, .45-caliber pistol serial number ADSF311
24 equipped with a switch in furtherance of that crime or
25 knowingly carried that firearm during and in relation to

1 that crime or both;.

2 Third, that the firearm was a machine gun.

3 If you find that the defendant proved these three
4 elements beyond a reasonable doubt, then you will be asked
5 to find whether the government has proven a fourth element
6 beyond a reasonable doubt and that is that the defendant
7 knew the firearm was a machine gun or was aware of the
8 firearm's physical characteristics that made it a machine
9 gun.

10 What's a "firearm"? A firearm is any weapon, and
11 it includes a starter gun, which will or is designed to or
12 may readily be converted to expel a projectile by the action
13 of an explosive. The frame or receiver of any such weapon,
14 any firearm muffler or firearm silencer or any destructive
15 device. Those are all included in the definition of a
16 weapon.

17 The term "machine gun" is any weapon that shoots,
18 is designed to shoot or can be readily restored to shoot
19 automatically more than one shoot without manual reloading
20 by the single function of the trigger. The term also
21 includes the frame or receiver of any such weapon, any part
22 designed or intended solely and exclusively, or by a
23 combination of parts designed and intended for use in
24 converting a weapon into a machine gun. Any combination of
25 parts for which a machine gun can be assembled if such parts

are in possession or control of a person.

"In furtherance of" means furthering, advancing, or helping forward. This means the government must prove the defendant possessed the firearm with the intent that it advance, assist or help commit the crime, but the government need not prove that the firearm actually did so.

You may find that a firearm was "carried" during the commission of a crime of possession with intent to distribute fentanyl if you find that the defendant was transporting a firearm in a vehicle.

In determining whether a defendant carried a firearm during and in relation to a drug-trafficking crime, you may consider all of the factors received in evidence in the case including the nature of the underlying drug-trafficking crime alleged, the proximity of the defendant to the firearm in question, the usefulness of the firearm to the crime alleged, and the circumstances surrounding the presence of the firearm.

Count 2 alleges two means by which the offense can be committed: Either by possessing a firearm in furtherance of a drug-trafficking crime; or by carrying a firearm during and in relation to a drug-trafficking crime. If the first three elements have been proved beyond a reasonable doubt as to one or both of these meanings of committing the crime, then you must find the defendant guilty of the crime charged

1 under Count 2, otherwise you must find the Defendant not
2 guilty of that crime.

3 And you can record your verdict and what you'll
4 see as paragraph 2A of the verdict form.

5 If you unanimously find the defendant guilty of
6 Count 2, then you must also complete paragraph 2B, which
7 asks you to decide the means by which the defendant
8 committed the offense, namely, whether you unanimously find
9 that the defendant possessed a firearm in furtherance of a
10 drug-trafficking crime or; two, that you unanimously find
11 that by carrying a firearm during and in relation to a
12 drug-trafficking crime or by both means. So when it comes
13 to 2B, you could, if you come to that, check either one or
14 two or both, but it couldn't be a situation where, for
15 example, six think it's one and six think it's the other.
16 You would have to unanimously agree before you put any check
17 on either of those marks because your decisions have to be
18 unanimous.

19 If you unanimously find the defendant guilty of
20 Count 2, then you must also complete paragraph 2C, which
21 asks you to decide the fourth element as described above,
22 and that is whether you unanimously find that the defendant
23 knew the firearm was a machine gun or was aware of the
24 firearm's physical characteristics that made it a machine
25 gun.

Count 3, possession of a machine gun. The elements are:

One, the defendant knowingly possessed the firearm described in Count 3 of the indictment, which is the Glock 41, .45-caliber pistol, serial number ADSF111, equipped with a switch.

Two, the firearm was a machine gun.

And, three, the defendant knew the firearm was a machine gun or was aware of the firearm's physical characteristics that made it a machine gun.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count 3; otherwise you must find the defendant not guilty of that crime, and record your verdict in paragraph 3.

Count 4, it's a crime for a felon to possess a firearm. This crime has four elements as charged in Count 4 of the indictment:

One, the defendant had been convicted of a crime punishable by imprisonment for more than one year;

Two, after that, the defendant knowingly possessed a firearm, that is a Glock 41, .45-caliber pistol, serial number ADSF311, equipped with a switch as described in Count 4 of the indictment.

Three, at the time the defendant knowingly

1 possessed the firearm, he knew he had been convicted of a
2 crime punishable by imprisonment for more than one year;.

3 And, four, the firearm had been transported across
4 the state line at some time during or before the defendant's
5 possession of it.

6 You are instructed that the government and the
7 defendant have agreed that the defendant has been convicted
8 of a crime punishable by imprisonment for more than one year
9 under the State of Minnesota's laws, and you must,
10 therefore, consider this first element as proven.

11 You are instructed that the government and the
12 defendant have agreed that the defendant knew he had been
13 convicted of a crime punishable by imprisonment for more
14 than one year under the laws of the State of Minnesota, and
15 you must consider the third element, therefore, as proven.

16 The government and defendant have agreed that the
17 firearm alleged in Count 4 of the indictment was
18 manufactured in a state other than the State of Minnesota
19 and that the firearm therefore meets the definition of the
20 term "firearm". I shouldn't say "therefore." They've
21 agreed that it was manufactured in a state other than
22 Minnesota, and they've agreed that the firearm meets the
23 definition of a firearm. Is that right, counsel?

24 MR. HOLLENHORST: Yes, Your Honor.

25 THE COURT: Okay.

1 If all these elements have been proved beyond a
2 reasonable doubt as to the defendant, then you must find the
3 defendant guilty of the crime charged under Count 4.

4 Otherwise, you must find the Defendant not guilty of this
5 crime and record your verdict in paragraph 4 of the verdict
6 form.

7 The indictment charges that the offenses allege
8 were committed on or about a certain date. Although it is
9 necessary for the government to prove beyond a reasonable
10 doubt that an offense was committed on a date reasonably
11 near the date alleged in the indictment, it is not necessary
12 for the government to prove that the offense was committed
13 precisely on the date charged.

14 I've used the term "reasonable doubt." Reasonable
15 doubt is a doubt based upon reason and common sense and not
16 doubt based on speculation. A reasonable doubt may arise
17 from careful and impartial consideration of all of the
18 evidence or from a lack of evidence. Proof beyond a
19 reasonable doubt is proof of such a convincing character
20 that a reasonable person after careful consideration would
21 not hesitate to rely and act upon that proof in life's most
22 important decisions. Proof beyond a reasonable doubt is
23 proof that leaves you firmly convinced of the defendant's
24 guilt. Proof beyond a reasonable doubt does not mean proof
25 beyond all possible doubt.

1 The government and defendant have stipulated or
2 agreed that certain facts are agreed to and, therefore, you
3 have to treat those facts as having been proved.

4 Intent or knowledge can be proved like anything
5 else. You may consider any statements made and acts done by
6 the defendant and all of the facts and circumstances in
7 evidence that may aid in determining what the defendant's
8 knowledge or intent was. You may but are not required to
9 infer that a person intends the natural probable
10 consequences of acts that they do knowingly or knowingly do
11 not do.

12 You are about to retire for your deliberations.
13 And in conducting your deliberations, there are certain
14 rules for you to follow, and I'm just going to list those
15 for you now.

16 First, when you go to the jury room, select one of
17 your members as your foreperson. That's the person who will
18 preside over your discussions and speak for you here in
19 court.

20 Second, it's your duty as jurors to discuss the
21 case with one another in the jury room, try to reach
22 agreement if you can do so without violence to your
23 individual judgment because the verdict, whether it's guilty
24 or not guilty, has to be unanimous.

25 Each of you must make your own conscientious

1 decision but only after you've considered all the evidence,
2 discussed it fully with your fellow jurors, and listened to
3 the views of your fellow jurors.

4 Don't be afraid to change your opinions if the
5 discussion persuades you that you should. But don't come to
6 a decision just because other jurors think it's right or
7 just to reach a verdict.

8 Third, if the defendant is found guilty, the
9 sentence to be imposed is my responsibility. You must not
10 consider punishment in any way in deciding whether the
11 government has proved its case beyond a reasonable doubt.

12 Fourth, if you need to communicate with me during
13 your deliberations, you may send a note through the marshal
14 or bailiff signed by one or more of the jurors. And I'll
15 respond as soon as possible either in writing or orally here
16 in open court. Do not tell anyone, including me how your
17 votes stand numerically.

18 Your verdict has to be based solely on the
19 evidence and the law that I've given you in these
20 instructions. The verdict whether guilty or not guilty must
21 be unanimous. Nothing I have said or done is intended to
22 suggest what your verdict should be. That is entirely for
23 you to decide.

24 Finally, a verdict form is simply the written
25 notice of the decision that you reach in this case. You

1 take this form. Here it is. And you take it to the jury
2 room and when each of you has agreed on the verdict, your
3 foreperson will fill in the form, sign and date it, and
4 advise the marshal or bailiff that you're ready to return to
5 the courtroom.

6 The verdict form, United States of America versus
7 Derrick Maurice Scott. It says, "Verdict Form. Count 1,
8 We, the jury, unanimously find the Defendant Derrick Maurice
9 Scott," and then there's lines guilty, not guilty, of the
10 crime charged in Count 1.

11 "Count 2, possession of a machine gun. We
12 unanimously find the defendant," and then there's lines for
13 guilty or not guilty, of the crime.

14 And then is the instruction, "If you unanimously
15 find the defendant guilty on Count 2, then complete 2B and
16 2C, otherwise skip 2B and 2C and go to Count 3."

17 And then here, this is on the second page, 2B is,
18 "we, the jury, unanimously find that the defendant Derrick
19 Maurice Scott," and then you select one or more, but as I
20 said before, you have to be unanimous on what you select,
21 and that's true for 2C as well.

22 And then Count 3, possession of a machine gun.

23 Same thing as Count 4. Same thing, lines. And
24 then there's a place to date and then a line for the
25 foreperson to sign.

1 And you will know from the oath about to be taken
2 by the court security officer that no one is allowed to
3 communicate with you during your deliberations. And you
4 must not communicate the state of your deliberations to
5 anyone including me.

6 Would you come forward please? The court security
7 officer I need to swear.

8 Raise your right hand, please.

9 (Court security officer sworn by the Court.)

10
11 THE COURT: Thank you very much. Here, I'll give
12 you the verdict form.

13 Thank you very much. Members of the jury, please
14 return to the jury room. And we will see you once you have
15 reached a verdict.

16 All rise for the jury.

17 (Jury out at 10:42 a.m.)

18 IN OPEN COURT WITHOUT JURY PRESENT

19 (10:42 a.m.)

20 THE COURT: Please be seated. Anything from
21 counsel before we go through the exhibits and send them
22 back?

23 MR. DEVORE: No, Your Honor.

24 MR. HOLLENHORST: No, Your Honor.

25 THE COURT: All right. Why don't you just go

1 through the exhibits with John, and he'll bring them back to
2 the court security officer. Thank you very much. And,
3 Mr. DeVore, make sure we've got your cell phone, will you?

4 MR. DEVORE: Yes.

5 THE COURT: All right. Perfect. Thank you very
6 much.

7 MR. DEVORE: I'll come right back here after I
8 finish.

9 THE COURT: That's great. I know from Google maps
10 that you'll be on the road for 34 minutes each way.

11 MR. DEVORE: Okay.

12 THE COURT: Thanks, everybody.

13 (Recess for deliberations at 10:43 a.m.)
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P R O C E E D I N G S

(1:20 p.m.)

IN OPEN COURT WITH JURY PRESENT

JURY VERDICT

THE COURT: Please be seated. Members of the jury, have you reached a verdict?

FOREPERSON: We have.

THE COURT: Would you hand the verdict form to the court security officer, please.

United States of America versus Derrick Maurice Scott, Count 1:

We, the jury, unanimously find the Defendant guilty of the crime of possession with intent to distribute fentanyl.

Count 2, we, the jury, unanimously find the Defendant guilty of the crime of possessing a machine gun in furtherance of a drug-trafficking crime.

2B, we, the jury, unanimously find that the defendant carried the firearm during and in relation to the drug-trafficking crime. So you have checked "carried", not checked "possessed the firearm in furtherance of a drug-trafficking crime," but yes to "carried during and in relation to the drug-trafficking crime."

2C, we, the jury, unanimously find that the Defendant knew the firearm was a machine gun and also was

1 aware of the firearm's physical characteristics that made it
2 a machine gun.

3 Count 3, we, the jury, unanimously find the
4 Defendant guilty of the crime of possessing a machine gun as
5 charged in Count 3.

6 Count 4, we, the jury, unanimously find the
7 Defendant guilty of the crime of being a felon in possession
8 of a firearm.

9 Dated today's date, 7th of February, 2023, signed
10 by the foreperson.

11 Members of the jury, is this your verdict?

12 THE JURORS: Yes, it is.

13 THE COURT: Did you want the jury polled?

14 MR. DEVORE: Yes, Your Honor.

15 THE CLERK: Members of the jury, please answer yes
16 or no as I call your name.

17 Mr. Adedayo, is this your verdict?

18 JUROR: Yes.

19 THE CLERK: Ms. Ait Sadiq?

20 JUROR: Yes.

21 THE CLERK: Mr. Amundson?

22 JUROR: Yes.

23 THE CLERK: Mr. Avery?

24 JUROR: Yes.

25 THE CLERK: Mr. Gilliland?

1 JUROR: Yes.

2 THE CLERK: Mr. Haagensen?

3 JUROR: Yes.

4 THE CLERK: Mr. Hannula?

5 JUROR: Yes.

6 THE CLERK: Ms. Krook?

7 JUROR: Yes.

8 THE CLERK: Mr. Larsen.

9 JUROR: Yes.

10 THE CLERK: Ms. Lecy?

11 JUROR: Yes.

12 THE CLERK: Mr. Link?

13 JUROR: Yes.

14 THE CLERK: And Ms. Ristau?

15 JUROR: Yes.

16 THE CLERK: Your Honor, the jury has been polled,
17 and they all concur.

18 THE COURT: Thank you very much.

19 Members of the jury, this concludes your jury
20 service. Thank you very much for your attention in this
21 case.

22 I have just a couple minutes of work to do yet
23 here in the courtroom but I will be back there. I have your
24 certificates. I'll be back in just a couple minutes, but we
25 really appreciate your attention, your showing up here

1 bright and early this morning, and your just willingness to
2 serve and your actual service. Much appreciated.

3 Please rise for the jury.

4 (Jury out at 1:25 p.m.)

5
6 IN OPEN COURT WITHOUT JURY PRESENT

7 THE COURT: Thank you, please be seated.

8 The exhibits will be taken by the government and
9 retained.

10 MR. HOLLENHORST: Yes, Your Honor.

11 THE COURT: In the government's possession.

12 Mr. Scott, the next thing that happens is the
13 probation officer will prepare a Presentence Investigation
14 Report. You and your lawyer should cooperate with them as
15 they put it together. Also, read it over when it's
16 finished, make sure there aren't any mistakes in it. And if
17 there are, you can probably get those worked out informally
18 ahead of time. And if not, if you can't get them worked out
19 then you can bring them to my attention during sentencing.

20 Mr. DeVore, is there anything else at this point?

21 MR. DEVORE: No, Your Honor.

22 THE COURT: Thank you very much for your service
23 in this case and for the extra work that you had to do. I
24 know you had another case and you had to go to work last
25 night and drive out to Carver County, so thank you very much

1 for your courtesies.

2 Mr. Hollenhorst, Ms. Walcker, anything from the
3 government?

4 MR. HOLLENHORST: Nothing more, Your Honor.

5 THE COURT: Okay. Thank you very much. I
6 appreciate your efficiencies and courtesies. We're in
7 recess.

8 (Court adjourned at 1:27 p.m.)

9
10 * * *

11 **REPORTER'S CERTIFICATE**

12
13 I, MARIA V. WEINBECK, RMR, FCRR, certify that the
14 foregoing is a true and accurate transcript of my
15 stenographic notes, and is a full, true, and complete
16 transcript from the proceedings produced to the best of my
17 ability.

18 Certified by: s/ Maria V. Weinbeck
19 Maria V. Weinbeck, RMR-FCRR
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